IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8535 of 1996
With
SPECIAL CIVIL APPLICATION No. 5546 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKER CHANDRIKA PRABHASHANKER & 8 - Petitioners
Versus
DIRECTOR EDUCATION & 2 - Respondents

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Appearance :
MR DM THAKKAR FOR M/S THAKKAR ASSOC. for Petitioners:1-9.
MR HEMANT MAKWANA AGP for Respondents : 1 - 2.
NOTICE SERVED for Respondents : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/11/2007

COMMON ORAL JUDGMENT

1. Common question of seeking mandamus to the respondents for according higher grade pay scale of Rs.2000-3500 to the petitioners in light of the Government Resolution dated 16.8.1994 is involved and therefore, both the matters are tagged together and being heard for final disposal.

2. The petitioners in both the petitions under Article 226 of the Constitution of India challenged the denial of higher grade pay scale of Rs.2000-3500 admissible to Class-II posts of Principal to the petitioners under the provisions of Government Resolution dated 16.8.1994 on the ground that denial is arbitrary, unreasonable and therefore, the denial deserves to be quashed and set aside and a writ of mandamus deserves to be issued to the respondents for according pay scale of Rs.2000-3500 to the petitioners.

3. Facts in brief deserves to be set out for appreciating the controversy in these matters.

4. All the petitioners were working as Secondary School Teachers on the posts of Assistant Teachers and at the relevant time, the assistant teachers like petitioners were paid salary in pay scale of Rs.1400-2600 and the next promotion post from that of Assistant Teacher is to the post of Principal in the pay scale of Rs.2000-3500. The State of Gujarat for alleviating the sense of frustration of employees stagnating on the same post and scale for a

period of 9 years, promulgated a policy by way of Resolution dated 5.7.1991 providing for giving higher grade pay scale to such employees, who did not receive any promotion or higher grade pay scale despite they being eligible for a period of at least 9 years. The State Government realised problems in working of the policy of GR dated 5.7.1991 and therefore replaced the same by another GR dated 16.8.1994. Now, therefore, the policy of 16.8.1994 would be material for consideration and examining the controversy.

5. The petitioners under this scheme were given the higher grade pay scale of 1640-2900, the scale, which was admissible to the post of Head Master in Secondary School. The petitioners have approached this Court challenging the denial of the scale which is prescribed for promotional post i.e Principal for which the pay scale of Rs.2000-3500 is prescribed under the relevant recruitment rules on the ground that the petitioners' next promotion is always to the post of Principal in the pay scale of Rs.2000-3500 and therefore, they are wrongfully denied the pay scale for the posts of Principal in the pay scale of Rs.2000-3500. The respondents have wrongfully given them the pay scale of Rs.1640-2900 as no posts having that scale is said to be a promotional post as per the Recruitment Rules of the promotional posts. The denial, therefore, is impugned in these petitions.

6. Shri Thakkar, learned counsel appearing for the petitioners have submitted that relevant clause in both the GR namely Resolution dated 5.7.1991 as well as

16.8.1991 are identical in terms and under Clause (iii) of GR dated 5.7.1991 the petitioners are entitled to receive higher grade pay scale of Rs.2000-3500, which is admissible to the post of Principal as the post of Principal is admittedly the promotional post so far as petitioners are concerned. The respondent Government could not have denied such scale, as the present petitioners would not be governed by second proviso to Clause 3(3), which prescribes that the pay scale accorded of any feader post and cadre and not the scale of promotional post is to be given on the ground that the post of higher Secondary Teacher and the post of Assistant Teacher in the Secondary Section can never be said to be falling in the same cadre and therefore, the petitioners have wrongfully been denied the benefits of higher grade pay scale admissible to the post of Principal by wrongly applying the second proviso of Clause 3(3) of the GR dated 16.8.1994. Shri Thakkar has relied upon the recruitment rules for substantiating his submission that feader cadre is well define and therefore, promotion from post of Assistant Teacher always lies to that of Principal and application of the second proviso to Clause 3(3) to the petitioners for denying the benefits is therefore, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. Shri Thakkar has also submitted that stand of the respondents that the petitioners are eligible to receive only the scale of Rs.1640-2900 admissible to the third category of Higher Secondary Teacher, having different pay scale of Rs.1640-2900 and therefore, the second proviso of Clause 3(3) would be applicable is not justified or borne out from

the record because no recruitment rules of Higher Secondary Teachers are shown or placed on record and no promotion ever from Higher Secondary Teacher to the post of Principal is given and therefore, it cannot be said to be a feader cadre post in Class III posts and thus the second proviso of Clause 3(3) is wrongly applied for denying the pay scale to the petitioners.

7. Shri Makwana, learned AGP has submitted that the petitioners are entitled to get pay scale of Rs.1640-2900 only in view of the provisions made in Clause 3(3) of the GR dated 16.8.1994. Shri Makwana has submitted that second proviso of Clause 3(3) is absolutely clear which indicates that wherever there are more than one feader cadre for promotional post, then, the feader cadre receiving the lowest pay scale is not automatically given the pay scale of higher post i.e the promotional post but is to be given the pay scale, which is nearer with scale already received and prescribed in the schedule. Shri Makwana has submitted that Higher Secondary Teacher can be said to be forming separate cadre wherefrom also promotion to the post of Principal is laid, in fact, as per the Rule shown, the Assistant Teacher in Higher Secondary are also forming a feader cadre. Shri Makwana submitted that looking to the recruitment rules of appointment to the post of Assistant Teacher, it can well be said that the appointment to the post of Higher Secondary Teacher is well envisaged in the said very rules and therefore, no new recruitment rules are required as it can well be said in the Resolution dated 28.10.1975, which contains the provision regarding

appointment in Clause-5. In view of this, it cannot be said that Secondary Teacher did not form a feader cadre for promotion to the post of Principal. Shri Makwana has emphatically submitted under instructions from the officials, who are present in the Court that promotion so far as Assistant Teacher are concerned is also not lying to the post of Principal only. The Higher Secondary Teachers are receiving their salaries in the pay scale of Rs.1640-2900 and from that post promotion lies to the post of Principal in the pay scale of Rs.2000-3500. Therefore, it can well be said that the present petitioners are governed by second proviso to Clause 3(3) of the Resolution dated 16.8.1994. Shri Makwana has relied upon the Revision of Pay (ROP) in order to indicate that there exists a post called “Head Master” which also is in the pay scale of Rs.1640-2900. Thus, from this pay scale also, it can well be said that the scale available or admissible to the post under Resolution dtd 16.8.1994 is that of feader cadre, which is prescribed in the schedule is Rs.1640-2900 and same is rightly be given to the petitioners.

8. Heard Shri Thakkar, learned counsel for the petitioners and Shri Makwana, learned AGP for the respondent State and perused the relevant records.

9. Shri Thakkar, learned counsel for the petitioners as well as Shri Makwana, learned AGP agree to the fact that so far as provision No. 3(3) of GR dated 16.8.1994 is concerned, it is identical with provision (iii) of GR dated 5.7.1991 also. Therefore, in order to appreciate the controversy, the 5.7.1991 resolution and proviso (iii)

which is equivalent to Clause 3(3) and pari-materia, clause (iii) of Resolution dated 5.7.1991 set out as under:-

"The first higher grade scale of pay shall be the scale of pay of the next promotion post provided that for employees in a post having more than one promotional post in different scales of pay, their first higher grade scale of pay shall be the lowest promotion post's scale of pay;

Provided further that in case there is no promotion scale, the first higher grade scale shall be the higher grade scale corresponding to his existing scale as specified in the Schedule annexed to this Government Resolution.

Provided also that in the case of posts with feader cadres in different pay scales instead of the promotional scale, the higher grade scale of such post shall be the higher grade scale corresponding to his existing scale as specified in the Schedule annexed to this Government Resolution;"

10. The second proviso to Clause 3(3) clearly indicates that where there are more than one feader cadre to a promotional post, then, the feader cadre receiving the salary in the lower pay scale will not be entitled to receive the pay scale prescribed for that promotional post but instead thereof, that cadre will get the pay scale of the another feader cadre receiving higher grade of pay scale. It deserves to be noted that in the instant case, it is not only that the Higher Secondary Teacher is receiving

the salary in the pay scale of Rs.1640-2900 but their exists a feader cadre of Head Master also as per the Gujarat Civil Services (Revision of Pay) Rules, 1987 in the pay scale of Rs.1640-2900. This category is also a Class-III forming part of one of the feader cadre entitled for promotion to Class-II post as per the recruitment rules called the Gujarat Educational Service Class II(Administration Branch) Department Rules, 1969. Thus, it can well be said that the second proviso to Clause 3(3) is rightly made applicable to the persons like present petitioners who are working as Assistant Teachers in Secondary School. Assuming for the sake of examining the submission of the counsel for the petitioners that as the promotion from the post of Secondary Teacher lies to the post of Principal in Class-II in the pay scale of Rs.2000-3500 and that scale is admissible to them, then, it may so happen that the Head Master in the scale of Rs.1640-2900 after having not completed 9 years of service would draw lesser salary than the teachers like present petitioners, who has completed 9 years of service in the pay scale of Rs.1400-2600 and would be entitled to get salary of Rs.2000-3500 though he would remain a Assistant Teacher only. In order to avoid such type of anomaly, the clause 3(3) has been rightly applied to the petitioners. Shri Thakkar, learned counsel for the petitioners has candidly admitted that the petitioners did not challenge the proviso or Clause 3(3) of the Government Resolution but as such the petitioners have challenged the applicability of the proviso to their cadre. In view of this, as submitted above, the respondent has rightly given the pay scale of Rs.1640-2900 to the

petitioners.

11. It deserves to be noted that the petitioners are relying upon the Government Resolutions dated 5.7.1991 and 16.8.1994 for claiming higher grade pay scale admissible to Class-II post in Educational Service Class-II. Their claim is based upon the assumption that as the Resolution is implemented for the object of removing sense of frustration amongst the eligible employees, who have completed 9 years of service and yet not promoted to the promotional post and therefore the promotion post being Class-II, they were entitled to receive the scale prescribed for Educational Service Class-II post. One need not forget that in fact the State was endevouring to remove the sense of frustration has offered a higher grade pay scale but at the same time State was under obligation to avoid an anomaly while granting higher pay scale. Therefore, in order to avoid of such an anomaly, the clause 3 has been caste in 5.7.1991 as well as 16.8.1994 resolutions. The Resolutions clearly prescribe that scale in such a case is to be a scale mentioned in the schedule and as per the schedule, the scale received by the petitioners is 1400-2600 against which, the scale mentioned is 1640-2900 and therefore, the petitioners cannot be said to be eligible or entitled to receive higher grade pay scale of Rs.2000-3500 admissible to Educational Service Class-II post.

12. In view of the aforesaid backdrop, this court is unable to accept the submission of Shri Thakkar that the petitioners were entitled to receive the higher grade pay scale of

Rs.2000-3500 admissible to the post of Assistant Teacher on applicability of Clause (iii) of GR dated 5.7.1991 and they were not likely to govern by the second proviso to Clause 3(3) of GR dated 16.8.1994. This Court is of the view that the respondent has rightly offered and given the pay scale of Rs.1640-2900 to the petitioners and therefore, the petitions have no merit and the same fail. Accordingly, both the petitions are rejected. Rule discharged in both the matters. There shall be no order as costs.

[S.R.BRAHMBHATT, J.]

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